

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-534a(a)(2) restricts appeals from preliminary hearings to situations in which there is a disputed issue as to whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made or whether certain defenses apply. As such, this matter is properly before the Appeal Board on an appeal from a preliminary hearing based upon the issue of whether claimant suffered accidental injury arising out of and in the course of his employment.

This claim stems from a fall suffered on April 15, 1994. At that time claimant alleged shoulder and right hip pain with back and leg pain following shortly thereafter. Respondent contends claimant's current need for medical treatment to the back and right leg results not from the work-related fall, but instead from nonwork-related activities of the claimant at home. To this end, respondent placed into evidence a video tape of claimant's activities at home. The material contained in the video tape does not show activities sufficient to have caused claimant to suffer accidental injury to his low back.

The medical report of Dr. Anthony Pollock dated September 11, 1995, states that the hip pain claimant alleged as part of the referral pain from his low back was due to the fall. Dr. Pollock diagnosed spondylothesis of L4-5 and degenerative changes associated with the spondylothesis. An MRI revealed lateral gutter stenosis which caused claimant's low back, leg pain and his associated foot-drop symptoms.

In a workers compensation proceeding it is the burden of claimant to prove by a preponderance of the credible evidence his entitlement to benefits. K.S.A. 44-501; K.S.A. 44-508(g). The Appeals Board finds, in this instance, claimant has satisfied that burden, proving for preliminary hearing purposes, that his back and right leg injuries did stem from the fall suffered on April 15, 1994. The Order of Judge Clark granting claimant benefits of medical treatment and, if necessary, temporary total disability, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated December 7, 1995, should be, and is hereby, affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David Farris, Wichita, Kansas
Eric K. Kuhn, Wichita, Kansas
Steven L. Foulston, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director